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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR
LEAVE TO FILE UNDER SEAL
AN EXHIBIT IN SUPPORT OF
BARD'S MOTION TO EXCLUDE
THE OPINIONS OF DRS.
KINNEY, ROBERTS, AND
KALVA AND MEMORANDUM
OF LAW IN SUPPORT**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively
"Bard") hereby respectfully move this Court, pursuant to the Stipulated Protective Order
(Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for
leave to file under seal an exhibit attached in support of Bard's Motion to Exclude the
Opinions of Thomas Kinney, M.D., Anne Christin Roberts, M.D., and Sanjeeva Kalva,
M.D. and Memorandum of Law in Support. This exhibit, contains certain trade secrets

1 and confidential information that are protected under the Stipulated Protective Order,
 2 warranting protection from public disclosure. Accordingly, there is good cause to grant
 3 Defendants' Motion for Leave to File Under Seal An Exhibit in Support of Bard's Motion
 4 To Exclude the Opinions of Drs. Kinney, Roberts, and Kalva and Memorandum of Law in
 5 Support. Defendants have notified Plaintiffs of their intent to file this Motion. Plaintiffs
 6 have agreed to the filing of such motions in the past; however, to date, Plaintiffs have not
 7 yet responded to Defendants' attempts to meet and confer on whether Plaintiffs oppose
 8 the Motion once Plaintiffs have had an opportunity to review the document in issue.

9 The exhibits sought to be sealed is attached hereto as Exhibit A.

10 **ARGUMENT AND CITATION OF AUTHORITY**

11 "When a court grants a protective order for information produced during discovery,
 12 it already has determined that 'good cause' exists to protect this information from being
 13 disclosed to the public by balancing the needs for discovery against the need for
 14 confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
 15 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-
 16 1780-PHX-JAT, 2012 WL 2260928 at *2 (D. Ariz. June 15, 2012) (sealing exhibits
 17 related to "Medicis' marketing strategy, Acella's product formulation,...various emails
 18 and deposition transcripts, viscosity test data, sales and marketing information, and
 19 various other documents" because "[m]uch of this information has been previously sealed
 20 by the Court, has been designated as confidential by the parties pursuant to the protective
 21 order in this case, or could otherwise potentially harm the parties if released publicly
 22 because of its confidential and sensitive nature.").

23 The document at issue, the Rule 26 Report of Drs. Kinney, Roberts, and Kalva,
 24 contains pieces of highly competitive, confidential, proprietary information that warrant
 25 protection under Federal Rule of Civil Procedure 26(c)(1)(G) because the information in
 26 the Report is not made public by Bard and, if obtained by Bard's competitors, could give
 27 an unfair economic advantage to those competitors. *Blanchard & Co., Inc. v. Barrick*
 28 *Gold Corp.*, No. 02-3721, 2004 WL 737485, at *5 (E.D. La. Apr. 5, 2004) (citing *Pansy v.*

1 *Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994)). Except for a small number of
 2 publicly available documents, all of the Bard documents cited in the Report were
 3 produced to Plaintiffs as “Confidential – Subject to Protective Order” on each page
 4 pursuant to Stipulated Protective Order (Doc. 269) ¶ 6.

5 The public disclosure of the Rule 26 Report of Drs. Kinney, Roberts, and Kalva
 6 would reveal confidential, proprietary and trade secret information and would create a
 7 heightened risk of irreparable harm to Bard’s competitive business concerns. Further, its
 8 inclusion in the public record would not only harm Bard because of the trade secrets and
 9 confidential information it contains, but it would also eviscerate the significant time and
 10 resources Bard has expended in protecting its business information. The potential for
 11 abuse and for competitive loss are real given Bard’s currently marketed IVC filter
 12 products. Accordingly, Defendants request that the Rule 26 Report be sealed.

13 RESPECTFULLY SUBMITTED this 24th day of August, 2017.

14 By: s/ Matthew B. Lerner

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 23 Peripheral Vascular, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Matthew B. Lerner

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EXHIBIT A

DOCUMENT PROPOSED TO BE FILED UNDER SEAL

Defendants request they be permitted to file under seal the following document in support of their Motion to Exclude the Opinions of Drs. Kinney, Roberts, and Kalva and Memorandum of Law in Support.

Exhibit G. Rule 26 Report of Drs. Kinney, Roberts, and Kalva